

STATE OF MICHIGAN

SUPREME COURT

(On Appeal From the Michigan Court of Appeals)

JAMES O. GORE and BOBBIE N. GORE,

Appellees,

Supreme Court No. 127669

Court of Appeals No. 248919

vs.

Lower Court No. 01-034913-CK

FLAGSTAR BANK, FSB,

Appellant.

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**PLAINTIFF'S SUPPLEMENTAL BRIEF IN OPPOSITION  
TO DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL**

**PROOF OF SERVICE**

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**COUNTER-STATEMENT OF QUESTIONS PRESENTED  
FOR REVIEW RELATED TO FACTS OF THE CASE**

- V. IS THE COURT OF APPEALS DECISION IN THIS CASE IN CONFLICT WITH STATE BANK OF STANDISH v. CURRY, 442 MICH. 76 (1993), AND CROWN TECHNOLOGY PARK v. D&N BANK, FSB, 242 MICH. APP. 538 (2000)?

THE COURT OF APPEALS ANSWERED:	NO
THE GORES ANSWER:	NO
FLAGSTAR ANSWERS:	YES

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN OPPOSITION  
TO DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL**

Defendant argues, at page 30 of its Application for Leave to Appeal, that the Court of Appeals decision in this case is in conflict with State Bank of Standish v Curry, 442 Mich. 76 (1993), and Crown Technology Park v. D&N Bank, FSB, 242 Mich. App. 538 (2000). This is untrue.

In State Bank of Standish v Curry, at p. 88 (1993), this Court held that a "sufficiently clear and definite" promise to loan money gives rise to a promissory estoppel claim enforceable in court. Effective January, 1993, the Michigan legislature in 1992 PA 245 imposed the additional requirement that an action could not be brought "unless the promise or commitment is in writing and signed with an authorized signature by the financial institution." MCL 566.132(2). In this case, the jury found that there was a written loan commitment with an authorized signature, and that plaintiffs had proven a cause of action for promissory estoppel based on that written commitment. Defendant invites this Court to revise the statute to require "a **contract** in writing", rather than a promise or commitment, so as to eliminate promissory estoppel as a cause of action against financial institutions. As noted by the Court of Appeals in Crown Technology Park v. D&N Bank, FSB, 242 Mich. App. 538, 550 (2000), the legislature did not go so far, but rather only precluded all actions based upon oral promises. The Court of Appeals decision in this case<sup>1</sup> respects the language of the statute of limitations. This Court should decline Defendant's invitation to rewrite the plain language of the statute, and in doing so to reverse its ruling in State Bank of Standish.


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<sup>1</sup> James O. Gore and Bobbie Gore v. Flagstar Bank, FSB, No. 248919, Unpublished (November 9, 2004).

**CONCLUSION**

Based on the foregoing, Defendant's Application for Leave to Appeal should be denied.

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